APPENDIX H

73-376

UNITED STATES OF AMERICA

State of Illinois,)
Appellate Court,) ss.
Second District,)

At a session of the Appellate Court, begun and held at Elgin, on the 3rd day of December, in the year of our Lord one thousand nine hundred and seventy-three, within and for the Second District of Illinois:

Present—Honorable ALLAN L. STROUDER,
Honorable JAY J. ALLOY,
Honorable PEYTON H. KUNCE,
LOREN J. STROTZ, Clerk Pro Ten
JOSEPH C. DORING, Sheriff

BE IT REMEMBERED, that afterwards, to wit: On September 13, 1974 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

No. 73-376

STATE OF ILLINOIS
APPELLATE COURT
SECOND DISTRICT

(Filed September 13, 1974)

THE PEOPLE OF THE STATE OF ILLINOIS
EX REL. MARGARET E. THOMPSON,
Plaintiff-Appellant,

vs.

COUNTY BOARD OF SCHOOL TRUSTEES OF DU PAGE COUNTY, ILLINOIS, MERRILL GATES, EX-OFFICIO SECRETARY AND SUPERINTENDENT, EDUCATIONAL SERVICE REGION, RAY PAGE, SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF ILLINOIS, BOARD OF EDUCATION, SCHOOL DISTRICT 53, BOARD OF EDUCATION, SCHOOL DISTRICT 57, COUNTY BOARD OF SUPERVISORS OF DU PAGE COUNTY, ILLINOIS AND RUTH TEST,

Defendants-Appellees.

Appeal from Circuit Court, Du Page County

Mr. Justice Kunce delivered the opinion of the court:

The Du Page County Board of School Trustees ordered annexation of territory to School District 57 and detachment from District 53 upon the joint petition of the districts. The plaintiff's pro se petition sought to set aside this order on administrative review contending that District 53 was involved in a boundary dispute and that there

were unissued bonds of the district at the time the petition was filed. Over the objection of plaintiff, the trial court granted the motion of Westmont Community Unit School District 201 for substitution as a party defendant as successor to former School District 57. District 201 conceded that the Board of Trustees' order should be vacated for the reasons alleged in plaintiff's petition for review, and the trial court accordingly set aside the Board's order. Plaintiff contends that District 201 was invalidly organized and, therefore, was improperly substituted as a party for District 57 and that additionally the trial court should have gone into the irregularities of the formation of the consolidated community unit district.

The trial court granted the precise relief requested by the plaintiff in her verified petition. It vacated and held for naught the Board's order of annexation. The defendants admitted the error of the Board's order as being untimely entered. This removed all dispute from the litigation between the plaintiff and the defendants. The issue raised by plaintiff after the matter was on review in the circuit court of the validity of the organization of District 201 was not germane to the question of the legality of the Board's annexing order. This issue was in effect a collateral attack on the organization of the district and could not be raised in an administrative review proceeding. The only proper method of attacking the validity of the organization of a school district or its board is by *quo warranto* proceedings. (*Schrodt* v. *Holsen,* 299 Ill. 247, 132 N.E. 424.) There was no error in vacating the order of the Board of School Trustees.

Accordingly, the judgment of the circuit court of Du Page County is affirmed.

Judgment affirmed.
Alloy, J., and Strouder, J., concur.

UNITED STATES OF AMERICA

State of Illinois,)
Appellate Court,) ss.
Second District,)

I, LOREN J. STROTZ, Clerk Pro Tempore of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the Opinion of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 13th day of September, A.D. 1974.

/s/ *Loren J. Strotz*
Clerk Pro Tempore
Appellate Court,
Second District.

UNITED STATES OF AMERICA

State of Illinois)
) ss.
Supreme Court)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of January in the year of our Lord, one thousand nine hundred and seventy-five, within and for the State of Illinois.

Present: Robert C. Underwood, *Chief Justice*
Justice Walter V. Schaefer
Justice Daniel P. Ward
Justice Joseph H. Goldenhersh
Justice Thomas E. Kluczynski
Justice Charles H. Davis
Justice Howard C. Ryan
William J. Scott, Attorney General
William G. Lyons, Marshal
Attest: Clell L. Woods, Clerk

BE IT REMEMBERED, that, to-wit: on the 29th day of January 1975, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

People ex rel. Margaret E. Thompson,
Petitioner,

No. 47116 *vs.*

County Board of School Trustees of Du Page County, Illinois, Merril Gates, Ex-Officio Secretary and Superintendent, Educational Service Region, Michael Bakalis, Superintendent of Public Instruction, State of Illinois, Board of Education, School District 53, Board of Education School District 57, County Board of Supervisors of Du Page County, Illinois and Ruth Test,
Respondents.

PETITION FOR LEAVE TO APPEAL FROM
APPELLATE COURT SECOND DISTRICT
73-376, 70-1204G

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioner costs by them in this behalf expended, to be taxed, and that they have execution therefor.

CLERK OF THE SUPREME COURT
(Letterhead)

Clell L. Woods, Clerk Telephone: Area Code 217

March 12, 1975

Mrs. Margaret E. Thompson
P. O. Box 133
Hinsdale, Illinois 60521

Dear Mrs. Thompson:

In Supreme Court today, in case No. 47116 entitled:

People ex rel. Margaret E.
Thompson, petitioner
vs.
County Board of School Trustees
of DuPage County, Illinois,
et al., etc., et al.,
respondents

motion by petitioner for reconsideration of the order denying petition for leave to appeal, or, in the alternative, to retax costs. Motion denied.

Very truly yours,
/s/ *Clell L. Woods*
Clerk of the Supreme Court

In The Eighteenth Judicial Circuit, Du Page County,
Wheaton, Illinois

No. 70-1204-G

(Filed May 31, 1973)

People ex rel Margaret Thompson,

Plaintiff

v.

County Board of School Trustees of Du Page County, Illinois, et al.,

Defendants

ORDER

This case coming before the Court on Plaintiff's and Westmont Community Unit School District No. 201, Du Page County, Illinois Motions, the Court having heard arguments of the parties hereto and being duly advised in the premises:

It is therefore Ordered,

1. That Butler Elementary School District No. 53, Du Page County, Illinois and Michael Bakalis, State Superintendent of Public Instruction be and are hereby, found in default.

2. That the Board of Education of Westmont Community Unit School District No. 201, Du Page County, Illinois, be and hereby is substituted as party defendant for the Board of Education of Westmont Elementary School District No. 57, Du Page County, Illinois.

3. That the parties hereto are hereby granted leave to file answers or other responsive pleadings to the Motions filed herein within fourteen days from the date hereof.

4. That this case be continued to June 19, 1973 at 10:00 A.M. for further hearing on said motions.

/s/ Philip F. Locke
Judge

Name—Tom Eckhardt
Attorney for District No. 201
Address—493 Duane
City—Glen Ellyn
Telephone—858-3130

In The Eighteenth Judicial Circuit, Du Page County, Wheaton, Illinois

No. 70-1204-G

(Filed June 19, 1973)

People ex rel Margaret Thompson
v.
County Board of School Trustees et al

ORDER

This cause coming on to be heard on motion of defendant School District 201, and the objections thereto filed by Margaret Thompson, and the parties having presented argument, the court finds:

A. That the petition between School District 53 and 57 was illegal because District 53 was involved in a boundary change that was not completed and therefore the County Board of School Trustees has no jurisdiction to consider said petition.

It is therefore ordered, adjudged and decreed that all decisions of the County Board of School Trustees in petition 70-2, and all orders entered therein be vacated and held for naught.

The court further finds that there is no just cause to delay the enforcement of a appeal from this order.

/s/ Philip F. Locke
Judge

Name—John Demling

70 155

UNITED STATES OF AMERICA

State of Illinois
Appellate Court—ss:
Second District

At a session of the Appellate Court, begun and held at Elgin, on the 1st day of December, in the year of our Lord one thousand nine hundred and sixty-nine, within and for the Second District of Illinois:

Present—Honorable Charles H. Davis, Presiding Justice
Honorable Mel Abrahamson, Justice
Honorable Thomas J. Moran, Justice
Howard K. Kellett, Clerk
Harry E. Booth, Sheriff

BE IT REMEMBERED, That, to wit: On the 7th day of August, A.D. 1970 certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

People of the State of Illinois, Ex Rel Margaret E. Thompson, Appellant
70-155 vs.
County Board of School Trustees of DuPage County, Illinois, Merrill Gates, Ex-Officio Secretary and Superintendent, Educational Service Region, Ray Page, Superintendent of Public Instruction, State of Illinois, Board of Education, School District 53, Board of Education, School District 57, County Board of Supervisors of Du Page County, Illinois, Appellees

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Appeal from the Circuit Court of DuPage County

Now on this day come the County Board of School Trustees of DuPage County, Illinois, Merrill Gates, Ex-Officio Secretary and Superintendent, Educational Service Region, and Ray Page, Superintendent of Public Instruction, appellees, by their attorneys, and move the Court to dismiss the Notice of Appeal filed on June 24, 1970, and submit therewith suggestions in support of said motions.

And also on this day comes the People of the State of Illinois, Ex Rel Margaret E. Thompson, Pro Se, appellant, and presents to the Court her objections to the motions of said appellees to dismiss the Notice of Appeal herein, together with reasons, suggestions and points and authorities, in support of said objections.

And the Court having duly considered the motions of said appellees, the objections of appellant thereto, as well as the matters and things alleged in support of said motions and objections, and being now fully advised in the premises;

It is therefore ordered by the Court, on its own motion, that the appeal in the above entitled cause be and the same is hereby dismissed.

UNITED STATES OF AMERICA

State of Illinois,
Appellate Court,—ss.
Second District,
70-155

I, HOWARD K. KELLETT, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete certified copy of the final order of the

said Appellate Court in the above-entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 22d day of July, A.D. 1971.

Howard K. Kellett
Clerk Appellate Court, Second District.

State of Illinois)
) SS
County of Du Page)

In The Circuit Court Of The Eighteenth Judicial Circuit,
Du Page County, Illinois
No. 70-1204 G
(Filed June 23, 1970)

People Of The State of Illinois Ex Rel. Margaret E. Thompson,

Plaintiff,

vs.

County Board Of School Trustees Of Du Page County, Illinois, Merrill Gates, Superintendent, Educational Service Region, And Ex-Officio Secretary, Ray Page, Superintendent Of Public Instruction, State Of Illinois, Board Of Education, School District 53, Board Of Education, School District 57, County Board Of Supervisors Of Du Page County, Illinois And Ruth Test,

Defendants.

ORDER

This cause coming on to be heard on the motion of Defendant, Merrill Gates, by and through his attorney, Wil-

liam V. Hopf, State's Attorney, County of Du Page, State of Illinois, who moves this Court to extend 30 days to said Defendants, Merrill Gates and County Board of Supervisors, to answer or otherwise plead to Plaintiff's complaint, and the Court being advised in the premises.

It is hereby ordered that Defendant is granted 30 days to answer or otherwise plead to Plaintiff's complaint.

/s/ Illegible
Judge

Dated: June 22, 1970
Name—Thomas Riggs, Assistant State's Attorney
Attorney for Defendants
Address—201 Reber Street
City—Wheaton, Illinois
Telephone—682-7050

APPENDIX K

State of Illinois)
) SS
County of Du Page)

In The Matter Of Petition To Detach Territory From School District No. 53 Of Du Page County, Illinois And Annexed To School District No. 57 Of Du Page County, Illinois

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ORDER
Of the County Board of School Trustees

Now this cause having come on for hearing under the provisions of Article 7 of The School Code and by virtue of petition filed with Merrill Gates, Ex-Officio Secretary of the County Board of School Trustees of Du Page County, Illinois, on the 20th day of March, 1970; and

The said Ex-Officio Secretary of said County Board having given notice of the presentation of said petition, in writing, to each Board of all districts involved in the proposed boundary change, a true copy of said notice being hereto attached, by reference made a part of this order; and

The said Ex-Officio Secretary of said County Board having further caused a notice of the presentation of such petition to be published once at least 10 days but not more than 15 days before the hearing in the Graphic News and the Hinsdale Doings, newspapers having general circulation within the area of the territory involved in the pro-

posed change of boundaries, and the return day having been fixed in accordance with said notices on April 6, 1970 and duly held, and a meeting of the County Board of School Trustees having been called for said return day by the President thereof by giving a 48 hour written notice of the meeting, stating the time and place of the meeting and the purpose thereof and it appearing that said petition is in all respects in compliance with the law as to form and content and signatures thereon; and the Ex-Officio Secretary of said Board having submitted maps showing the districts involved, a report of financial and educational conditions of the districts involved, and the probable effects of the proposed changes to the school board affected and to members of the County Board of School Trustees not later than 5 days prior to the day upon which the hearing was held, and the Board having heard evidence as to the school needs and conditions of the territory in the area within and adjacent thereto and as to the ability of the districts to meet the standards of recognition as prescribed by the Superintendent of Public Instruction; and having taken into consideration any possible division of funds and assets which will result from the change of boundaries; and having taken into consideration whether it is to the best interests of the schools of the area and the educational welfare of the pupils that such change in boundaries be granted; and after consideration of the aforesaid; and after the said Board being fully advised in the premises;

It is Hereby Ordered, Adjudged And Decreed by the County Board of School Trustees of DuPage County, Illinois, that the petition be and it is hereby granted, and that the following territory, to-wit:

All that part of the Southwest Quarter of Section 35, Township 39 North, Range 11 East of the 3rd Principal Meridian lying West of the East Right of Way of the Robert Kingery Highway, also known as Illinois Route No. 83, in DuPage County, Illinois

be detached from School District No. 53, DuPage County, Illinois and annexed to School District No. 57, DuPage County, Illinois.

It is Further Ordered, Adjudged And Decreed that Merrill Gates, Ex-Officio Secretary of said Board, be and he is hereby authorized and directed to deliver to the Committee of Petitioners, if any, and any persons who has filed his appearance in writing at the hearing and any attorney who has appeared for any person and any objector who has testified at said hearing and the County Superintendent of Schools of such county in which the territory or any district lies, a certified copy of this Order, also make and file within thirty (30) days with the County Clerk of DuPage County a map of the districts involved.

Dated this 8th day of April, 1970.

County Board Of School Trustees
Of Du Page County, Illinois

/s/ *Robert Kimbell*
President

/s/ *Merrill Gates*
Ex-Officio Secretary

APPENDIX M

In The Circuit Court For The Eighteenth Judicial District Of Illinois, Chancery Division

No. 65-2188-G

(Filed November 4, 1969)

Miller Builders, Inc., a corporation,

Plaintiff

vs.

Fairfield Savings And Loan Association, et al.,

Defendants.

FINAL DECREE

This cause came on for trial upon plaintiff's complaint and its amended and supplemental complaint, and defendants' answers thereto. Defendant Fairfield Savings and Loan Association ("Fairfield") having withdrawn its demand for a jury, the Court heard and considered the testimony and demeanor of all of the witnesses and examined and considered all of the exhibits offered and received in evidence and the written brief filed by the parties, and heard and considered the arguments of counsel and is now fully advised in the premises.

The Court finds:

1. The Court has jurisdiction of the subject matter of this suit and of the parties hereto.

2. Plaintiff Miller Builders, Inc., ("Miller Builders") is a builder-developer. Defendant Fairfield Savings and Loan Association ("Fairfield") is a state chartered savings and loan association. Defendant Cosmopolitan National Bank of Chicago is a party defendant hereto only

in its capacity as Trustee of Trust No. 15777 and not individually.

3. The subject matter of this action is a 640+ acre parcel of real estate bordered generally by 35th Street, Route 83, Ogden Avenue and Cass Avenue in Du Page County, Illinois, formerly owned by S. A. Healy and S. A. Healy Company (hereinafter referred to as the "Healy Farm"). The legal description of the Healy Farm is:

PARCEL 1:
The South 40 feet of the Southeast quarter of Section 34 (excepting therefrom; that part conveyed by an Association of Franciscan Fathers of the State of Illinios by deed dated November 2, 1936, to S. A. Healy, and recorded as document 374528, in book of deeds 315, page 181), all in Township 39 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 2:
The West half of the Southwest quarter of Section 35, Township 39 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 3:
The Northeast quarter of the Southwest quarter of Section 35, Township 39 North, Range 11, East of the Third Principal Meridian, (except that part thereof described as follows: Commencing at the Northeast corner of said premises; thence West along the North line of said premises, 450 feet; thence South along a line parallel to the East boundary of said premises, 500 feet; thence East on a line parallel with the North boundary of said premises to the East boundary line of said premises; thence North to the Place of Beginning), in Du Page County, Illinois.

ALSO

PARCEL 4:
The Northwest quarter of Section 2, Township 38 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 5:
The East half of the Northeast quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 6:
The East half of the Northwest quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, except the East 33 feet thereof, and excepting therefrom, that part of the East half of the Northwest quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, described as follows: Commencing on the East and West center line of said section at a point 33 feet West of the center of Said section; thence West along said center line, a distance of 265 feet; thence North on a line parallel to the North and South center line of said section, 986.26415 feet; thence East parallel to said East and West center line, 265 feet; thence South on a line parallel to and 33 feet West of said North and South center line, 986.26415 feet to the place of Beginning in Du Page County, Illinois.

ALSO

PARCEL 7:
The East 33 feet of the Northwest quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 8:
The West half of the Northwest quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois.

ALSO

PARCEL 9:
That part of the East half of the Northwest quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, described as follows: Commencing on the East and West center line of said Section at a point 33 feet West of the center of said section; thence West along said center line, a distance of 265 feet; thence North on a line parallel to the North and South center of said section, 986.26415 feet; thence East parallel to said East and West center line, 265 feet; thence South on a line parallel to and 33 feet West on said North and South center line, 986.26415 feet to the place of beginning, in Du Page County, Illinois.

ALSO

PARCEL 10:
The West half of the Northeast quarter of Section 3, Township 38 North, Range 11, East of the Third Principal Meridian, together with all buildings, and improvements thereon, containing 79.86 acres, more or less, in Du Page County, Illinois.

ALSO

PARCEL 11:
That part of the Southeast quarter of Section 34, Township 39 North, Range 11, East of the Third Principal Meridian, in Du Page County, Illinois described by beginning at the Southwest corner of the Southeast quarter of said Section 34 and running thence Easterly on the quar-

ter section line to a point located in said line, 700 feet Westerly of the Westerly line of the property now owned by the Association of Franciscan Fathers, extended South to said section line for a place of beginning; thence North to center line of the road known as 35th Street; thence Easterly along the center line of said road to the Westerly line extended Northerly of the property owned by the Association of Franciscan Fathers; thence Southerly along said Westerly line of the said property owned by the Association of Franciscan Fathers to the Southerly line of said Section 34; thence Westerly along said Southerly line of said Section 34 to the place of beginning, in Du Page County, Illinois.

4. Previous to 1962, Miller Builders had obtained most if not all of its institutional financing from Fairfield.

5. Miller Builders and Fairfield had developed a financing arrangement over the years whereby title to unimproved raw land was placed in Fairfield (usually through the device of a land trust) as a security device to secure Fairfield in its financing of Miller Builders. The parties also executed "take-out" agreements, pursuant to which Miller Builders would take title by conveyance from Fairfield of a pre-determined number of lots, on a stipulated time schedule and would pay Fairfield a given price per lot. On every such occasion—prior to the Healy Farm purchase—Miller had legal or equitable title to the property involved in such financing before Fairfield entered into financing arrangements.

6. Commencing in 1962, Miller Builders made a number of offers to S. A. Healy, owner of the Healy Farm, for the purchase by Miller Builders of that property. Included in Miller's plan to acquire the Healy Farm was a proposal to Fairfield that Fairfield participate, either by financing the entire acquisition or financing the portion of

the purchase that would ultimately be devoted to single family residences.

7. In April, 1965, representatives of both Miller Builders and Fairfield met with Healy at the Farm and an oral agreement was reached with S. A. Healy that involved the price of $6,500 per acre for the sale of land.

8. Prior to the negotiations which occurred in April, 1965, Miller Builders had arranged for the financing of the approximately 180 acres of the Healy Farm lying adjacent to Ogden Avenue to be developed for non-residential purposes, and had obtained a written agreement to that end from a mortgage banker, Salk, Ward & Salk, in the amount of $1,800,000 (approximately $10,000 per acre). This commitment was conditioned upon annexation of the property to the Village of Clarendon Hills.

9. Under the agreement between Miller Builders and Fairfield, title to the entire Healy Farm was to be taken in the name of Fairfield's title-holding trustee, and upon deposit in escrow of the $1,800,000 respecting the non-residential acreage, that acreage was immediately to be conveyed by the title-holding trustee to Miller Builders. Title to the residential acreage, which was to be financed by Fairfield, was to be retained in the name of Fairfield's title-holding trust as security, subject to the execution of a lot "take-out" financing agreement with Miller Builders of the type which had been developed and employed by the parties in their prior land purchase financing deals. The residential acreage was to be divided into approximately 1,400 lots and Miller Builders was to take out lots from year to year on a "take-out" schedule with all lots to be taken out within a 10-year period. On the disputed issues of fact in the financing arrangements above set forth it is the finding of this Court that the testimony of the witnesses for Miller Builders proved the position of Miller Builders by a clear preponderance of the evidence.

10. Under the agreement between the parties Fairfield was to receive a 10% interest factor on month-end balances outstanding or approximately double its investment over the 10-year take-out period. This agreement was predicated upon the belief that annexation to Clarendon Hills would be forthcoming.

11. While numerous attempts were made by the parties and their counsel to finalize details of the written "take-out" financing agreement which had been agreed upon in principle between Miller Builders and Fairfield, the written "take-out" agreement had not yet been completed for execution when the events which gave rise to this litigation took place.

12. The Purchase and Sale Contract with the Healys respecting the Healy Farm was executed on July 30, 1965, by Fairfield as "Buyer" and the sons of S. A. Healy as "Sellers" in their own right and as representatives of their father, S. A. Healy, who had become incapacitated in early May, 1965. The contract was voidable at the option of the purchaser if the purchaser failed to secure annexation of the subject property to the Village of Clarendon Hills.

13. Miller Builders, with the aid and cooperation of Fairfield proceeded with its preparation for the proposed annexation of the property to the Village of Clarendon Hills and retained various expert consultants. At the end of August, 1965, the annexation plan was informally presented to the Board of Trustees of the Village of Clarendon Hills. Shortly thereafter, the Village manager advised representatives of Miller Builders that, based on the informal presentation, a majority of the trustees was opposed to annexation.

14. After the parties learned that Clarendon Hills was opposed to annexation of the Healy Farm, they had no obligation to purchase the land from Healy; nor was their prior agreement still in effect for the following reasons:

a. Miller could not redeem the 180 acres of non-residential land from Fairfield because the commitment with Salk, Ward and Salk failed in the absence of annexation to Clarendon Hills. Moreover, no portion of the land was then zoned for non-residential use.

b. Without annexation to Clarendon Hills, the portion of the property intended for residential development remained zoned R-1 and R-2 and could thus not yield 1,400 residential lots.

c. Municipal sewer and water facilities—which the parties contemplated would have been supplied by the Village of Clarendon Hills—were not available on the subject property.

15. Each party to this suit, after the failure to secure annexation, believed that it could proceed to secure for its own the Healy land to the exclusion of the other. Neither party concealed from the other its intention to take all the land for itself or its belief that it had the right to do so at that juncture.

16. Fairfield waved the annexation provision of the contract and purchased the land from S. A. Healy in December, 1965. Fairfield thus preserved the *res* of the bargain, which all parties agree has increased markedly in value during the pendency of this suit. (The land has recently been appraised pursuant to agreement of the parties to this suit by an appraiser appointed by the Court at a conservative nine million dollars). Neither Fairfield nor the plaintiff, however, could in law or equity buy the land exclusive of the rights of the other in light of all the understandings set forth above.

17. A resulting trust accrued to the benefit of Miller Builders when Fairfield acquired the title to the Healy Farm, based upon the fact that the evidence shows that the relationship of borrower and lender existed between the parties. This resulting trust, which has been established by clear and convincing evidence, is in the nature of a mortgage and Fairfield has such an interest in the acquisition of the property.

18. Since the understanding of the parties was not reduced to writing and since annexation to Clarendon Hills never occurred, it is presently impossible to fashion a decree which encompasses the original agreement for financing between the parties.

19. Fairfield paid $4,171,193.42 as the purchase price of the Healy Farm and in the interim has paid the property taxes that have been assessed.

It Is Hereby Ordered, Adjudged And Decreed:

A. A resulting trust is decreed in the Healy Farm (more particularly described in Paragraph 3 above) in favor of Miller Builders, and defendant Fairfield Savings and Loan Association is hereby decreed to hold title to said Healy Farm as Trustee for the use and benefit of Miller Builders, Inc. subject to the terms and conditions set forth herein.

B. Fairfield Savings and Loan Association shall, and it is hereby ordered and decreed to, convey clear and merchantable title to the Healy Farm (as more specifically described in Paragraph 3 of this Decree) to Miller Builders, Inc., or its nominee, either (1) upon payment by Miller Builders, Inc., into the depository of this Court within 210 days from the entry of this Decree the sum of $4,171,-

193.42, plus interest thereon at the rate of 10% per annum compounded annually from December 6, 1965, to the time said sums are paid, plus an amount equal to the property taxes on the Healy Farm property heretofore paid by Fairfield Savings and Loan Association, or (2) pursuant to the terms of a financing program satisfactory to defendant Fairfield and to the Court, presented to the defendant and to the Court by Miller Builders and agreed to by the Court and defendant Fairfield within said 210 day period.

C. If Miller Builders has not paid the sums provided for in Paragraph (B) within 210 days from the entry of this Decree, or has not presented a financing program agreed to by defendant Fairfield and this Court within said period, a public auction of the property shall be held on a date to be fixed by the Court within 30 days of the expiration of the 210 day period. Fairfield shall have a first lien on the land and the proceeds of the sale in the amount of $4,171,193.42 plus taxes and interest as set forth in Paragraph B, supra. If no amount exceeding an amount necessary to satisfy Fairfield's lien is bid at said public auction, Fairfield shall retain title to the property and hold same free and clear of all liens and encumbrances of any nature whatsoever. Fairfield shall have the right to bid upon said land at the public auction.

D. This Court retains jurisdiction for purposes of implementing and enforcing this Decree.

Enter:

/s/ *William J. Bauer*
William J. Bauer

Date Nov. 4, 1969

70-80

UNITED STATES OF AMERICA

State of Illinois
Appellate Court—ss:
Second District

At a session of the Appellate Court, begun and held at Elgin, on the 7th day of December, in the year of our Lord one thousand nine hundred and seventy, within and for the Second District of Illinois:

Present—Honorable Thomas J. Moran, Presiding Justice
Honorable Mel Abrahamson, Justice
Honorable Glenn K. Seidenfeld, Justice

Howard K. Kellett, Clerk
Joseph C. Doring, Sheriff

BE IT REMEMBERED, that afterwards, to wit: On Dec 18 1970 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

NO. 70-80
IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

Margaret E. Thompson,
Plaintiff-Appellant,

vs.

County Board Of School Trustees Of Du Page County, Illinois, Robert R. Kimbell, President, Merrill Gates, Ex-Officio Secretary And County Superintendent of Schools,
Defendants-Appellees.

Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

Mr. Justice Abrahamson Delivered The Opinion Of The Court.

The plaintiff appeals from orders of the Circuit Court of Du Page County that dismissed her complaint and amended complaint for administrative review of certain decisions of the DuPage County Board of School Trustees on the grounds that she did not have standing to bring suit.

Community High School District Number 107 (Naperville) and Community High School District Number 99 (Downers Grove) had filed a joint petition to detach certain territory from District 107 and annex it to District 99 pursuant to Article 7 of the School Code. After a hearing on the petition, the Board of School Trustees directed the County Superintendent to enter an order to deny the joint petition on July 7, 1969. On August 14, 1969, the Board entered a further order to permit a re-

hearing on the petition and, although the record is not clear on this point, it appears that the petition was then granted. It is agreed that both orders are deemed final administrative decisions as defined by Section 1 of the Administrative Review Act. Ill. Rev. Stat. 1969, Ch. 110, par. 264) and subject to review.

The amended complaint was brought by the plaintiff as an "objector" at the public hearings and as a resident of an adjacent district that would be affected by the decision. It is alleged that the joint petition had been filed pursuant to a recommendation made by a group called the "South DuPage County Boundary Study Steering Committee" and was but a part of a comprehensive plan to change the boundaries of all school districts in southern DuPage County. The amended complaint further alleged

> "That on information and belief the agreed on boundary changes made commitments affecting the taxing ability, the bonded indebtedness, the equality of monies expended on education per pupil, zoning, town or village boundaries and real estate taxes in both School District Number 53, Butler, and School District Number 86, Hinsdale Township High School wherein plaintiff resides."

The amended complaint sought an administrative review of the decisions of the Board and a finding that certain sections of the School Code are unconstitutional. The case was originally brought directly to the Supreme Court but was transferred to this Court with a ruling that no constitutional questions were involved.

Section 7-7 of the School Code (Ill. Rev. Stats., 1969 Ch. 122, Sec. 7-7) provides for the review of final administrative decisions of the board of school trustees as follows:

> "The decision of the county board of school trustees shall be deemed an 'administrative decision' as defined in Section 1 of the 'Administrative Review Act' and any resident who appears at the hearing or any petitioner or board of education of any district affected may within 35 days after a copy of the decision sought to be reviewed was served by registered mail upon the party thereby apply for a review of such decision in accordance with the 'Administrative Review Act', and all amendments and modifications thereof and the rules adopted pursuant thereto . . ."

The right to administrative review is "limited and circumscribed by the statute or statutes authorizing such review." Stirniman v. County Board of School Trustees, 26 Ill. App. 2nd 245, 249.

The record does establish that the plaintiff did personally appear at the hearings before the Board and voice her objections to the proposed boundary changes and the procedures followed by the school authorities. It also appears that a certified copy of the decision of July 7 was furnished the plaintiff by registered mail and that notice was given to her of the order for a rehearing. The pleadings also establish, as we have seen, that plaintiff was not a resident of either District 107 or 99 but that she was a resident of District 86 at the time the decision was rendered.

The appellee contends that Section 7-7 limits the right of review of a decision involving a boundary change to a petitioner, a board of education of an affected district, or a resident of the territory directly involved in the change of boundaries. Section 7-6 provides, however, that at the hearing held pursuant to a petition for a change of boundaries ". . . any resident of the territory described in the petition or any resident in any district affected by the change of boundaries may appear . . . ." and object to the petition and offer evidence in support of the objections.

(Ill. Rev. Stats., 1969, Ch. 122, sec. 7-6). It would be inconsistent to permit a resident of an affected district to object at a hearing and offer evidence and then to preclude his right to a judicial review of the ultimate decision.

However, the amended complaint before us utterly fails to establish that the decisions of July 7 or August 14 in any way affected the districts in which the plaintiff resides. The allegations that the proceedings of the "Boundary Study Steering Committee" included "the intent of detaching further territory from school district 86 and possibly from school district 53 causing tax losses to both district . ." are far too vague and conjectural to establish the right to bring this suit. Actions brought under the Administrative Act are subject to the provisions of the Civil Practice Act (Ill. Rev. Stats, 1969, Ch. 110, sec. 277) and are subject to be stricken if they fail to establish a cause of action.

It also appears that the plaintiff has failed to join all the necessary parties as required by section 271 of the Administrative Review Act (Ill. Rev. Stats, 1969, Ch. 110, sec. 271). Those requirements are mandatory and the failure to join all parties "of record to the proceedings before the administrative agency . ." would of itself have been grounds for dismissal of the complaint. Babington v. County Board of School Trustees, 7 Ill. App. 2d 193, 194.

For the reasons stated, the order of dismissal entered by the trial court was proper and will be affirmed.

Judgment Affirmed.

Moran and Seidenfeld, JJ., concur.

Certificate of Howard K. Kellett, Clerk.

APPENDIX P

No. 73-376

In The

APPELLATE COURT OF ILLINOIS

Second District

(Filed May 21, 1975)

People Of The State Of Illinois Ex Rel. Margaret E. Thompson,

Plaintiff-Appellant,

vs.

County Board Of School Trustees Of Du Page County, Illinois, Merrill Gates, Ex-Officio Secretary And Superintendent, Educational Service Region, Ray Page, Superintendent Of Public Instruction, State of Illinois, Board Of Education, School District 53, Board Of Education, School District 57, County Board Of Supervisors Of Du Page County, Illinois,

Defendants-Appellees.

Appeal from the Circuit Court of the 18th Judicial Circuit
Du Page County, Illinois
No. 70-1204G
Honorable Philip F. Locke, Judge Presiding

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the People of the State of Illinois on the relation of Margaret E. Thompson, the Appellant above named, hereby appeals to the Supreme Court of the United States from a final judgment of the Appellate Court of Illinois, Second District, affirming the judgment of the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois, entered as to fewer than all claims and parties in an administrative review proceeding

as adopted by the School Code, Chapter 122, Sections 7-6 and 11-6, Ill. Rev. Stat. 1971 & 1973, to review the validity of the statutes, the validity of the Appellate Court mandate allegedly entered on August 7, 1970, in Case No. 70-155 the validity of the organisation of Unit School District 201, the validity of the construction given the Administrative Review Act, entered in this administrative review proceeding on September 13, 1974.

This appeal is taken pursuant to 28 U.S.C. 1257 (1), (2), & (3) and 28 U.S.C. 2403.

Dated this 21st day of May, 1975

/s/ *Margaret E. Thompson*
Margaret E. Thompson
Appellant
Box 133
Hinsdale, Illinois 60521—323-3381

State of Illinois)
) SS.
County of Du Page)

AFFIDAVIT OF SERVICE

Margaret E. Thompson, being first duly sworn upon oath, deposes and says that she served the above Notice of Appeal to the Supreme Court of the United States upon:

John Bowman, State's Attorney, 207 Reber St., Wheaton, Il 60187

John Demling, 493 Duane Bldg., Glen Ellyn, Il 60137

by mailing first class, postage prepaid, from the United States Post Office Hinsdale, Illinois 60521, on May 21, 1975.

/s/ *Margaret E. Thompson*

Subscribed and sworn to before me this 21st day of May, 1975,

/s/ *Dorothy Irvine*
Notary Public

State of Illinois)
Appellate Court) ss:
Second District)

I, Loren J. Strotz, Clerk of the Appellate Court, in and for the Second District of said State, and keeper of the records and Seal thereof, do hereby certify the annexed and foregoing to be a true, full and complete copy of the Notice Of Appeal To The Supreme Court Of The United States, from a final judgment of the Appellate Court of Illinois, Second District, affirming the judgment of the Circuit Court of the 18th Judicial District, DuPage County, Illinois, in the case of People Of The State Of Illinois, Ex Rel. Margaret E. Thompson, Plaintiff-appellant v. County Board Of School Trustees Of DuPage County, Illinois, Merrill Gates, Ex-Officio Secretary And Superintendent, Educational Service Region, Ray Page, Superintendent Of Public Instruction, Et Al, Defendant-appellees, Appeal from the Circuit Court of DuPage County, Illinois, and assigned General Number 73-376 in this Court, and filed in my said office on the 21st day of May, A.D. 1975, as the same appears from the records and files in my said office now remaining.

In Witness Whereof, I hereunto subscribe my name and affix the Seal of said Court, at the City of Elgin, in said State, this 23d day of May, A.D. 1975.

/s/ *Loren J. Strotz*
Clerk of the Appellate Court,
Second Judicial District of Illinois.